THE HONOURABLE SRI JUSTICE N. V. RAMANA

WRIT PETITON NO. 11314 OF 2006

DATED: 26-10-2006

BETWEEN:

Ch. Narsimha, S/o.
Advaiah

… Petitioner

And

A.P.S.R.T.C., Musheerabad,
Hyderabad, rep. by its
Managing Director and another

…Respon

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 11314 of 2006

Oral order:

The petitioner joined the service of the respondents-APSRTC as Driver in the year 1981. While working as such, based on the report dated 22.11.2003 of S.T.I., a charge sheet dated 25.11.2003 was issued to the petitioner for his unauthorized absence. The petitioner submitted his explanation to the said charges.

Dissatisfied with the explanation, the respondents conducted enquiry. Based on the enquiry report dated 26.12.2003 submitted by the Enquiry Officer, the petitioner states that the respondents issued notice dated 03.02.2004, calling upon him to show cause as to why he should not be removed from service, and he submitted his explanation thereto on 09.03.2004. During the departmental proceedings, the petitioner states that he was continued in service. While so, the petitioner states that he fell sick

on 21.04.2006, he could not attend duty till 01.05.2006 as he was taking treatment at APSRTC Hospital, Tarnaka. The petitioner states that when he reported for duty on 02.05.2006, he was not allowed to join duty, and on the other hand, was issued the impugned order dated 25.04.2006, removing him from service.

The learned counsel for the petitioner submits that the 2nd respondent has passed the impugned order of removal taking into consideration the absence of the petitioner for the period subsequent to the enquiry proceedings, in respect of which, the enquiry officer having concluded the enquiry, submitted his report also, and the petitioner had also submitted his explanation to the show cause notice of removal. He submitted that the impugned order passed by the 2nd respondent is violative of the provisions of Regulation 12(3) of the APSRTC (Classification, Control and Appeal) Regulations, 1967, in that no opportunity whatsoever was given to the petitioner to explain about his post-enquiry report unauthorized absence.

On the other hand, the learned Standing Counsel for the respondents-APSRTC submitted that the petitioner has given an undertaking in his explanation to the show cause notice of removal that he would not absent himself from duties unauthorizedly. Since the petitioner had violated his undertaking, the respondents have passed the impugned order.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC and perused the impugned order.

Admittedly, for the unauthorized absence of the petitioner during the months of October-November, 2003, the respondents chargesheeted the petitioner on two charges. The petitioner submitted his explanation to the said charges, but the respondents dissatisfied with the explanation conducted an enquiry. Based on the enquiry report, the respondents issued notice calling upon him to explain as to why he should not be removed from service, and the petitioner also submitted his explanation thereto. Though the petitioner submitted his explanation to the show cause notice as far back

as on 09.03.2004, the respondents did not pass any order, and the petitioner continued to be in service.

As can be seen from the impugned order, the 2nd respondent apart from taking into consideration the unauthorized absence of the petitioner in the months of October-November, 2003 and the enquiry report in respect thereof and the explanation submitted by the petitioner to the show cause notice of removal, has also taken into consideration the musters of the petitioner for the period from 2005 upto 24.04.2006. The respondents, admittedly, did not initiate any disciplinary proceedings nor framed any charges against the petitioner nor issued any notice to him, in respect of his alleged unauthorized absence as evident from the musters from 2005 upto 24.04.2006. In the absence of any opportunity given to the petitioner to explain as to why he could not attend duty as is evident in the musters for the period from 2005 upto 24.04.2006, the 2nd respondent could not have passed the impugned order of removal, and more so taking into consideration the said unauthorized absence. In similar facts situation, a learned Judge of this Court in W.P. No. 28353 of 1996, vide his orders dated 21.03.1997, set aside the order of removal, when it was complained, and in fact, found that the disciplinary authority had passed the order of removal taking into consideration the period of unauthorized absence for which no specific charge was framed against the petitioner nor was any enquiry conducted in that regard. Since in the instant case also, the 2nd respondent has taken into consideration the post-enquiry report unauthorized absence of the petitioner, in respect of which, neither there was any charges framed nor any enquiry conducted, I am of the considered opinion, that the impugned order not only violated the principles of natural justice, but has also violagted Regulation 12(3) of the (Classification, Control and Appeal) Regulations, 1967 which states that the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges and communicated to the employee charged together with statement of the allegations or a copy of the report on which each charge is based, and of

any other circumstances which it is proposed to take into consideration in passing orders on the case. In that view of the matter, the impugned order of removal, passed by the 2nd respondent cannot be sustained, and it is accordingly set aside.

In the result, the writ petition is allowed. This order, however, does not bar the respondents from taking appropriate action against the petitioner for his post-enquiry report unauthorized absence. No costs.

N.V. RAMANA, J.

Date: 26.10.2006
KSR/RNS